

ZONING BOARD OF APPEALS
MEETING MINUTES

May 12, 2009

4:00 P.M.

CALL TO ORDER: Mr. Carlyle Sims, called meeting to order at 4:00 p.m.
(Chairperson & Vice-Chair are excused)

ATTENDANCE:

Members Present: Rick Barnes, Deland Davis, Gentry Hammons, Mike Fatt, James Moreno and Carlyle Sims

Members Excused: Greg Dunn, and John Stetler

Staff Present: Susan Bedsole, Director Licensing & Compliance; Jill Steele, Asst. City Attorney; Brad Misner, Planning Supervisor; Glenn Perian, Senior Planner; and Leona Parrish, Planning Admin. Assistant.

ADDITIONS OR DELETIONS TO THE AGENDA:

1. **Deletion:** Item (D) #Z-07-09 as variance will not be required per City Attorney's Office.
2. **Deletion:** Postpone Item (E) #Z-08-09 as petitioner asked it to be postponed until the next meeting in order to meet with the Neighborhood Planning Council.
3. **Addition:** Mr. Glenn Perian will provide an update under Old Business regarding two previous appeals that went before Judge Garbrecht, Circuit Court.

NEW BUSINESS:

Appeal #Z-04-09: (727 W. Michigan Ave.)

Mr. Glenn Perian stated this was an appeal for a use variance that would allow the continuation of a 6-unit residential dwelling in a "C-3 Intensive Business District". He noted this property was originally permitted to be built in 1946 for a 4-unit, and no permits could be found authorizing the change from a 4-unit to a 6-unit residential.

Mr. Merwin Vandlen, 6737 Kingdon Rd., Holt, MI 48842, was present to speak regarding his variance request to allow a six-unit residential use in a four-unit structure. Stated in 1946 the original permit was for a 4-unit even though it is currently a 6-unit, all plumbing etc. is consistent with the original building when it was built and is asking to allow it to be used as a 6-unit residential use.

Mr. Gentry Hammons asked if he was aware it was a 4-unit when purchased.

Mr. Vandlen stated he was not aware it was a 4-unit as he purchased it as a 6-unit and when registered as a 6-unit research showed it to be only 4-units. Said he is paying taxes for a 6-unit building.

Mr. Carlyle Sims asked regarding the egress in the basement and would need to have two egresses. Asked if it has separate circuits and heating units.

Mr. Vandlen stated yes, they do have separate electric circuit breakers all lined up together. The windows meet code and entire tile, etc. are the same for all the units and the same as the original.

Mr. Sims asked Mr. Vandlen if he checked with the original owners. Mr. Vandlen stated he did not know them. Mr. Sims stated that the son-in-law and daughter are still alive and live in town.

Mr. Jim Moreno asked Mr. Perian if this was discovered due to the new Rental Ordinance.

Mr. Perian stated the property is currently zoned "C-3 Intensive Business" which typically would not allow a residential building in a commercial district. The building permit was issued in 1946 to construct a 4-unit, and with the new rental ordinance "Chapter 1463" it is required to be registered and found no previous record of being an approved 6-unit. They provided the property owner with the following options:

1. Request that they demonstrate that the conversion of the building from a 4-unit family residential dwelling to a 6-unit family residential was accomplished with valid building permits or zoning variances. (which has not been done)
2. Reduce the occupancy from 6-units to 4-units and amend the rental registration permit application for 4-units.
3. Petition the Zoning Board of Appeals to allow the additional 2-units as legal non-conforming conditions.

Mr. Perian stated that in this case the applicant is requesting a use variance and 2/3 of membership vote is necessary to approve this request; that would be 5 votes.

Mr. Gentry Hammons asked the owner what the hardship would be if it were not approved.

Mr. Vandlen stated the hardship would be financial and income from the 2-units that would be lost \$1,000 dollars per month. Said the good thing is if it is denied he only has a 4-unit, basically it is due to refinancing etc.; if it is a 6-unit it would be commercial property which means any type of financing he would need would be for commercial, because it is commercial the appraisal and property worth is based upon the income that the property produces, losing two units he would lose approximately \$1,000 dollars a month, which is considerable considering he only brings in about \$2,800 dollars a month. Stated he guessed they did not pull permits, because as a 4-unit residential they could get standard housing financing and because it is in a commercial zone it decreases dramatically if he only has 4-units.

Mr. Hammons stated regarding financial gain being lost; the loss would be considerable with taxes etc. it is not a financial gain. Mr. Vandlen stated he would not have a financial gain if it goes from what he expected when purchased as a 6-unit and if it reverts back to a 4-unit then his loss is considerable.

Mr. Davis asked how many of the units were rented at this time. Mr. Vandlen stated only four are rented, one is being evicted and one not being rented because of the ruling. Said he usually can fill all six as they are geared towards low income like persons on disability or Government assistance.

Mr. Sims asked Mr. Vandlen when he purchased this property. Mr. Vandlen stated he purchased in 2005 by land contract from Mr. William Morris, who was under the impression it was a six-unit. He noted that the two basement units are approximately 100 sq. ft. smaller to allow for utilities etc.

Mr. James Moreno asked did he have it inspected when it was purchased. Mr. Vandlen stated only this past year 2008/2009 because of the new ordinance. Said he completely rehabbed the building.

Mr. Gentry Hammons asked if he was aware the 4-unit was grandfathered use. Mr. Vandlen stated, no that he only just found out it was a 4-unit when the inspection was done. Stated it was built as an apartment building and was not a converted house.

Mr. Rick Barnes asked if when he purchased this property in 2005, had he registered it as a rental property. Mr. Vandlen stated yes he did approximately 6-months later as it took him that long to get it livable.

Mr. Hammons stated because of the grandfathered use as a 4-unit apartment and reasons for financial gain he could not be in support.

Mr. Vandlen stated financial gain is not the sole hardship; he just would not be able to use the two bottom apartments. Said if it is a financial hardship or not, he would still have the same worth of a building, as the City says it is still worth the same whether it is a 4 or 6 unit. It does make it a hardship because he would not be making as much money, but also he would have two good units not being able to be used because someone did not pull the permits. In his estimation it is irrelevant, it is a six-unit that should have had permits to have six-units.

Mr. Carlyle Sims asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. GENTRY HAMMONS MADE A MOTION TO APPROVE # Z-04-09 VARIANCE TO ALLOW USE OF A LEGAL NON-CONFORMING PROPERTY 4-UNIT TO BECOME A 6-UNIT RESIDENTIAL USE IN AN "C-3 INTENSIVE BUSINESS DISTRICT" FOR PROPERTY LOCATED AT 727 W. MICHIGAN AVENUE, SUPPORTED BY MR. JAMES MORENO.

Discussion:

Ms. Jill Steele, Assistant City Attorney, was present to speak and stated that on May 11, 2009 an appeal from Mr. Jenkins went before the Circuit Court. Said the Circuit Court upheld the decision of this Zoning Board and denied his appeal. That appeal was asking was it grandfathered in (which is not on this application) they need to look at it as an allowed use variance. Quoted Sec. 1234.04 (b). She asked the board if this property can be used in compliance with the zoning code; that it needs to meet the 10 items listed in the zoning code ordinance.

Mr. Carlyle Sims asked if the property owner could apply for a rezoning of this property for a 6-unit. Mr. Glenn Perian stated yes, it would be unlikely it would be approved in looking at the Future Land Use Map for the zoning of properties.

Mr. Vandlen stated he owns two lots together and one has an older home built in 1918 with a six car garage behind it and that they are not being used as none of his tenants have vehicles. Said it has a road between them which is a shared driveway that goes to the rear.

MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION FAILED. (See Attached Sheet of Zoning Board of Appeals Findings)

Mr. Carlyle Sims stated they may appeal to the Circuit Court or look at another possible location that would not require a variance or affect the homeowners.

Appeal #Z-05-09: (2510 Capital Ave. S.W.)

Mr. Glenn Perian stated this was an appeal from TWT Enterprises requesting a variance to waive the height and sized requirement to allow additional height increase of an additional 6ft. to be 18 ft. high and an additional size increase of 10 sq. ft. to be 60 sq. ft. for a sign in an "01 Office District". Noted for the record we have written permission from the property owner Mr. Roger Thompson to allow Mr. Thomas Schwarz, Signs Unlimited to represent regarding this variance request.

Mr. Schwarz, Signs Unlimited, 8279 S. 33rd. Scotts, MI, was present to speak; stated the property owner Mr. Roger Thompson is requesting to increase the size of the sign to allow room for 8 building tenants, currently there is only room for 6 on the existing sign. Asking for an increase in height of the sign for better visibility as the vehicles currently obstruct the view of the sign.

Mr. Deland Davis stated he went to that location on Sunday and did find you could not see the lower 1/3 of the sign as it was low and that cars were parked on each side blocking the sign. Said it appeared to have approximately 20 parking spaces besides the 4 or 5 next to the sign and asked if they could eliminate the spaces on each side of the current sign.

Mr. Schwarz stated there were not as many spaces as it appears, he had a drawing of the lot and with 8 possible tenants in the building they fill all the spaces, said it would be restrictive to the tenants if they eliminated those parking spaces.

Mr. Carlyle Sims stated if it were higher it would go into the trees in the City right-of-way and would also not be seen because of the trees for those driving south. He stated this is a self created because of having the parking spaces located next to the sign. Noted everyone wants a higher sign and if approved others would want theirs increased; the current ones that are higher were approved before the Township merged with the City and the Lone Star property used the existing original foot-print.

Mr. Rick Barnes asked if they could eliminate the front parking; he asked Mr. Perian what does the code state for the amount of parking spaces required.

Mr. Perian stated they would need to do as the ordinance states which is one space per every 200 square footage of floor area for professional offices. Said the current sign is considered non-conforming regarding the front setback; it is not a 25 ft. set-back. Said this appeal is requesting only an increase in size and height; that if the current sign was removed the new one would need to comply with the current ordinance and be set-back 25 ft.

Mr. Schwarz provided a list of tenants that need the parking spaces. He asked about the size increase of 60 sq. ft. from 50 sq. ft. and said the hardship is due to having 8 tenants and needing sign pace for them.

Mr. Carlyle Sims asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

**MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE # Z-05-09
VARIANCE TO WAIVE THE HEIGHT AND SIZE REQUIREMENT TO ALLOW**

ADDITIONAL HEIGHT INCREASE OF 6 FT. AND AN ADDITION SIZE INCREASE OF 10 SQ. FT. FOR A SIGN IN AN "O-1 OFFICE DISTRICT" FOR PROPERTY LOCATED AT 2510 CAPITAL AVENUE, S.W., SUPPORTED BY MR. GENTRY HAMMONS.

Discussion:

Mr. Mike Fatt stated he frequently goes to this location and finds that the parking spaces in the front are used and currently those closest to the building are not being used due to workmen building a scaffolding which is used by persons going into the lower level. He has never seen the lot full, if it meets code for number of parking spaces; he suggest the spots on either side of the sign be left open for better visibility.

Mr. James Moreno said he concurs with Mr. Fatt; the area closest to the sign is smaller and most cars were parked nearer to the building.

Mr. Gentry Hammons has two suggestions; there be no parking on either side of the sign and that the sign be kept the same size and not raise it no more than 4 feet.

Mr. Rick Barnes stated if the bottom was raised from 3 ft. to 6 ft. to see be able to see over the average car. Mr. Schwarz asked about increasing the square footage.

Mr. Perian stated that if the sign was replace with a new sign it would need to have a 25 ft. setback from front property line as the ordinance states.

Mr. Carlyle Sims asked if they eliminated two parking spaces would it create a parking hardship; he likes the idea of moving it up above the cars no more than 4 ft. Mr. Perian stated it depends on the building square footage and their type of uses.

Mr. Schwarz stated the old sign only has room for 6 tenants and they now need room for 8 tenants. He might need to work figure the parking needed with Mr. Perian. Said the owner would like a new sign. He asked if he submitted a new variance request for setback for a new sign, would it have a chance.

Mr. Sims asked if they could table until the next meeting to see if spaces can be eliminated legally.

Mr. Deland Davis asked if moving the sign back 25 ft. might be a different issue all together.

Ms. Jill Steele stated the board needs to look at this application before them today and not try to make promises regarding hypothetical situations.

Mr. James Moreno stated that the variance request presented does not ask for a setback variance; if it were tabled can they amend this application variance request.

Mr. Glenn Perian stated they would definitely need to re-notice and ask the City Attorney's Ofc. if the application could be amended to add a setback request.

Ms. Jill Steele stated she thinks they could withdraw this application and submit a new application to provide full relief of what they are asking if they want to very in terms of the ordinance.

Mr. Carlyle Sims asked Mr. Schwarz if they wished to postpone or withdraw their petition. Mr. Schwarz stated he would like to postpone his appeal at this time and work with Mr. Perian on trying to make it compatible. The property owner really would like a new sign and does not know the parameters'.

Mr. Perian stated if he was to postpone this application it would remain without the request for the setback; what the board is suggesting is they can make new application for the size, height and setback. There is no guarantee it would be approved by the Zoning Board of Appeals it would still need to meet the ordinance standards. The burden is up to him to prove the practical difficulty hardship case.

Mr. Schwarz stated with having the 8-tenants and they can only get 6 on the current sign at the 12 ft. He would like to work with Mr. Perian to make it workable to make it feasible for the board to approve.

Ms. Susan Bedsole stated they can postpone and bring back new petition and old one with the potential of it being approved and then consider both applications.

AMENDED MOTION: MR. JAMES MORENO AMENDED HIS MOTION TO APPROVE # Z-05-09 VARIANCE TO POSTPONE THE PETITION UNTIL THE NEXT MEETING TO WAIVE THE HEIGHT AND SIZE REQUIREMENT TO ALLOW ADDITIONAL HEIGHT INCREASE OF 6 FT. AND AN ADDITION SIZE INCREASE OF 10 SQ. FT. FOR A SIGN IN AN "O-1 OFFICE DISTRICT" FOR PROPERTY LOCATED AT 2510 CAPITAL AVENUE, S.W., SUPPORTED BY MR. GENTRY HAMMONS.

VOTE TAKEN TO POSTPONE THIS PETITION; ALL IN FAVOR, NONE OPPOSED.

Appeal #Z-06-09: (781 W. Goguac Street)

Mr. Glenn Perian stated this was an appeal request from Mr. Thomas Schwarz, Signs Unlimited on behalf of AGAPE Ministries Church for a variance to allow a sign to be placed 5 ft. from the front property line for property located at 781 W. Goguac St. He stated this property is zoned "R-1B Single Family Residential", Chapter 1296.35 states free standing signs are permitted 24 sq. ft. in size and needs to be no closer than 10 ft. from the street right-of-way line. The existing sign sits in a flower planter, they wish to turn it 90 degrees and not extend it any farther than the current planter but turn it so it faced Goguac Street. He does have a letter from the property owner allowing Mr. Schwarz to represent them.

Mr. Thomas Schwarz, Signs Unlimited, 8279 S. 33rd, Scotts, MI, stated the sign is so close to the street that no one can see and is a true hardship. He stated they are asking for it to be 5 ft. closer and want to keep it within the current existing planter box base. He stated they have looked at many different ways without eliminating their parking spaces.

Mr. Carlyle Sims asked if they just wanted to turn the current sign. Mr. Schwarz stated they wished to put a new smaller sign and turn it to face the street and would fit inside the planter box.

Mr. James Moreno said looks like the sign is conforming, his rotation and setback needs a variance.

Mr. Mike Fatt asked if the sign was going to be closer to the center of the road. Mr. Schwarz stated it would be 5 ft. closer and will be a smaller sign and still be within the planter box.

Mr. Deland Davis asked if the sign could be moved east and then back 5 feet, said the parking lot is east of the property. Mr. Schwarz stated they have thought of everything and where it is works as it gets into the parking and gets blinded. There are parking spaces to the east also.

Mr. Rick Barnes stated the property next door have a sign approximately where they would like this new one, if moved differently to the east it would block their ramp coming out of the front of the building. If moved to the east there is a sign next door that would totally block their sign. If moved the other way there are cars from the used car lot parking along there, so the only way to do it would be as they are requesting. Said if it was to stay within the current planter box he would be in agreement.

Mr. Carlyle Sims stated if the back post was up against the back wall you would gain a few feet from the photo, so you would only need 3 ft. instead of 5 ft. Mr. Schwarz stated yes, there are a few feet that could be used and would work. Mr. Sims states he would be in favor of approval of the 3 ft.

Mr. Carlyle Sims asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE # Z-06-09 ALLOWING A 3 FT. VARIANCE FOR A SIGN IN THE FRONT YARD SETBACK FOR A CHURCH LOCATED AT 781 W. GOGUAC STREET; SUPPORTED BY MR. GENTRY HAMMONS.

Discussion:

Mr. Deland Davis asked if the post could be put up to the inside wall and therefore not need as much of a variance.

Mr. Rick Barnes stated if it was moved back it might not need a variance.

Ms. Jill Steele, Asst. City Attny. provided a copy of the variance standards Ord. 1296.31 and are similar to the other standards, but in the ordinance there are specific standards that need to go thru and make findings on when it relates to a sign variance. If you are approving something less than what they are requesting, the board needs to be specific about how much you are granting from the ordinance if less than the request. Need to note items (a) thru (j) of the findings from 1296.31. It is similar to the routine findings sheet but is different for sign variances.

MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN ON THE MOTION FOR THE VARIANCE; FIVE (DAVIS, HAMMONS, MORENO, SIMS, AND BARNES) IN FAVOR; ONE (FATT) OPPOSED: MOTION APPROVED.

Findings:

Mr. Deland Davis stated he votes yes, because of section (h) the problem does not exist throughout the city, because the building sits closer to the front property line and is unique and shows a practical difficulty for this structure; he is in support.

Mr. Michael Fatt stated he does not see any hardship. He feels that turning the sign will be no different.

Mr. Gentry Hammonds, Mr. James Moreno, Carlyle Sims, and Rick Barnes stated they are in support of the variance.

OLD BUSINESS:

Mr. Glenn Perian stated we need a formal action by postponing item (E) #Z-08-09 from the Hinman Co. regarding 2545 Capital Avenue, S.W. to allow them time to meet with the Neighborhood Planning Council.

MOTION: WAS MADE BY MR. DELAND DAVIS TO POSTPONE APPEAL #Z-08-09; SUPPORTED BY MR. JAMES MORENO. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

Mr. Glenn Perian stated regarding 32 & 38 Battle Creek Avenue; Ms. Jill Steele, Assistant City Attorney mentioned to the board that appeals #Z-08-08 & Z-09-08 for Battle Creek Avenue owned by Mr. Steve Jenkins came before the ZBA last September of last year. Said on May 11, 2009 they went to Circuit Court seeking an appeal regarding their denial for an increase in rental units. Said Judge Garbrecht had upheld the ZBA's decision and denied their appeal in both cases; he said the Zoning Board acted properly in both of those cases.

Ms. Steele provided a document to the Zoning Board and asked it be used. Said unnecessary hardship is difficult to prove and that they might be receiving more of these types of variance requests and that their findings are important.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. JIM MORENO TO APPROVE THE MARCH 10, 2009 ZONING BOARD OF APPEALS MINUTES; SUPPORTED BY MR. DELAND DAVIS. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

COMMENTS BY THE PUBLIC:

Ms. Susan Bedsole, Director of Licensing and Compliance, introduced Mr. Brad Misner as the new Planning Supervisor. Mr. Misner said he was glad to be back in Battle Creek after several years living and working in California; noted it was nice to see Mr. Davis again as he had been one of his students in the past. He is looking forward to helping support the board and ensure they have the information they need to make accurate and timely decisions.

COMMENTS BY THE MEMBERS / STAFF:

Mr. Carlyle Davis thanked the Planning Department staff for the work done on the reports.

Mr. Glenn Perian provided an update regarding the March, 2009 meeting for the revisions to the ordinance regarding accessory buildings. Noted it was presented to the Planning Commission and will be discussed and ask them to provide some direction at their next meeting.

ADJOURNMENT: Meeting was adjourned at 5:30 p.m.

Submitted by: Leona A. Parrish

Administrative Assistant, Planning Department